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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-217066

DATE: February 5, 1985

MATTER OF: Siska Construction Company, Inc.

DIGEST:

1. Contracting agency's issuance of an amendment to a solicitation which advised of the rejection of the sole bid received and the resolicitation of the procurement constitutes adverse agency action on protest against the rejection of that bid previously filed with the agency and subsequent protest filed with GAO over 1 month later is untimely.
2. Protest alleging improprieties apparent in an invitation for bids which was not filed until after bid opening is untimely.
3. GAO will not consider on the merits a protest in which it is alleged that a number of bidders are ineligible for award for a variety of reasons but the protester does not identify which bidders are the subject of its allegations nor to which bidder each allegation applies.

Siska Construction Company, Inc. (Siska), protests the rejection of its bid as nonresponsive by the National Park Service, Department of the Interior (Park Service), under invitation for bids (IFB) No. LOWE-117A, a small business set-aside, for construction and renovations at Lowell National Historical Park, Massachusetts. Upon rejection of Siska's bid, the Park Service canceled the original solicitation and readvertised the procurement since Siska's nonresponsive bid was the only bid received. Siska's bid was rejected as nonresponsive since it was accompanied by eight pages of text which the Park Service regarded as qualifying or restricting the bid: Siska characterizes the text as "clarifications."

In addition to protesting the rejection of its bid, Siska protests the readvertisement of this procurement, announced by the Park Service in addendum No. 3 to the IFB, dated September 24, 1984. Siska also objects to addendum No. 4, which extended the time period for receipt of bids from November 8 to November 28, claiming that it gave other potential bidders too much time in which to "ferret out" Siska's subcontractors and suppliers in an effort to

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underbid Siska. Furthermore, Siska claims that six of the nine concerns which submitted bids in response to the readvertisement are ineligible to receive the award. Siska claims that two of the bidders are affiliated companies and, therefore, should be disqualified from the competition, and that four other companies which submitted bids are "fronts" for much larger companies and, thus, are not small business concerns eligible for the award of a small business set-aside contract.

The protests are dismissed.

Siska was orally advised by the Park Service on September 13 that its bid, opened on September 11, 1984, was nonresponsive to the IFB. By letter dated September 17, Siska protested the rejection of its bid to the contracting officer. On September 19, Siska received the contracting officer's letter of September 17, which formally advised Siska that its bid had been rejected. In that letter, the contracting officer also advised that it was anticipated that the project would be readvertised, through an addendum to the solicitation, in the near future. By letter of September 25, the contracting officer denied Siska's protest. Siska's protest to this Office of the rejection of its bid was dated November 2 and was received (filed) on November 8.

Under our Bid Protest Procedures, once a protest has been timely filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester receives actual or constructive notice of initial adverse agency action. 4 C.F.R. § 21.2(a) (1984). Siska's initial protest to the Park Service was timely; the question is whether its subsequent protest to our Office was filed within the 10-day period prescribed by our procedures. In order to answer that question, we must determine when Siska actually or constructively knew that the Park Service had acted adversely to its agency level protest.

Siska states that it never received the September 25 letter in which the contracting officer denied Siska's protest. We note, however, that in addition to that letter, the agency also issued addendum No. 3 to the IFB on September 24, which advised that "the bids received" under the original solicitation "have been rejected" and that the project was being resolicited with a new bid opening date

of November 8. A copy of the bidders' mailing list submitted by the Park Service shows that some of the concerns listed, including Siska, were mailed copies of addendum No. 3 on September 25. We believe that addendum No. 3, which advised that the Park Service had rejected all bids and was proceeding with its resolicitation of the procurement, was sufficient to place Siska on notice that its protest had been denied. Although Siska states that its protest to our Office was filed "within six days of the notice and invitation to rebid," Siska has not specified the date on which it received its copy of addendum No. 3. We note that in its chronology of events, Siska has indicated September 24 as the date addendum No. 3 was issued, but makes no mention as to when it received the addendum. We note that the bidders' mailing list correctly listed Siska's mailing address. Furthermore, Siska has offered no explanation of the over 1-month delay between the Park Service's mailing of addendum No. 3 and Siska's filing of the protest in our Office. In the absence of any explanation by Siska as to any delay in its receipt of addendum No. 3, it is reasonable to assume that it was received within 1 calendar week. Accordingly, it appears that Siska's protest filed with this Office on November 8, over 1 month after the Park Service mailed addendum No. 3, is untimely and will not be considered by our Office. See Halifax Engineering, Inc., B-209822, Dec. 15, 1982, 82-2 C.P.D. ¶ 537, and Travel Corporation of America, B-209368, Nov. 22, 1982, 82-2 C.P.D. ¶ 467.

As for the resolicitation, by letter dated November 30, Siska protested the Park Service's extension by addendum No. 4 of the period for receipt of bids to November 28, claiming that the extension gave its competitors an unfair advantage. Siska's protest of the new bid opening date was received in this Office on December 10.

Our Bid Protest Procedures require that protests based upon alleged improprieties in IFB's which are apparent prior to bid opening be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984). T.L. Garden & Associates, Inc., B-216318, Sept. 28, 1984, 84-2 C.P.D. ¶ 368. Since the alleged impropriety in the solicitation was not protested until after bid opening, Siska's protest is untimely and will not be considered.

In its protest filed on December 10, Siska also asserts that two of the nine bidders improperly submitted bids on the readvertised procurement since the two

companies, which Siska does not name, are controlled by the same board of directors. Siska further contends that four of the bidders, which it also does not name, are not eligible for award under this small business set-aside since these companies are "fronts" for much larger corporations. In addition, Siska alleges that some of these bidders are by themselves too large to qualify for a small business set-aside.

We believe that where, as here, a protester alleges that a number of other bidders are ineligible for award for a variety of reasons, a fundamental requirement of an adequately detailed statement of protest is that the protester identify those bidders and state to which each allegation pertains. Siska has not done so and, in the absence of such information, we do not believe it has stated a basis for protest in sufficient detail to warrant further consideration. We note, however, that the general rule is that multiple bids from more than one commonly owned and/or controlled company may be accepted unless such multiple bidding is prejudicial to the interests of the government or other bidders. Pioneer Recovery Systems, Inc., B-214700, B-214878, Nov. 13, 1984, 84-2 C.P.D. ¶ 520. Further, under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration has conclusive authority to determine matters of small business size status for federal procurement purposes. Accordingly, our Office does not consider size status protests. Hart Precision Products, Inc., B-216059, Aug. 22, 1984, 84-2 C.P.D. ¶ 219.



Comptroller General
of the United States